

UNITED STATES DISTRICT COURT
OF MASSACHUSETTS

SILVIA LEARY)	Civil Action No.
Plaintiff)	
v.)	
)	
BERKSHIRE GROUP LLC)	COMPLAINT
Defendant)	
)	
)	

PARTIES

1. Silvia Leary (“Leary”) is a Massachusetts resident with an address of 10 Marion Rd. Salem, MA 01970.

2. The Berkshire Group LLC (“Berkshire”) is a Massachusetts entity registered in November 2014. Its registered agent is Corporation Service Company, 84 State Street, Boston, MA 02109. Berkshire owns the VIA Seaport Residences located at 5 Fan Pier Blvd Boston, MA 02210.

JURISDICTION

3. Jurisdiction is predicated on federal question. The amount in controversy exceeds One Hundred Thousand Dollars (\$100,000.00).

FACTS

4. Leary, a Massachusetts resident, is the owner of the VIA trademark. United State Registered Trademark No. 86562755. See Exhibit 1. The mark also appears on her website which was first used in 2010. See <http://www.viasworld.com/#home.html>. See Exhibit 2. Leary also has a pending Copyright Application, Case No. 1-5726503821.

5. Defendant maintains a website that uses the VIA logo constituting both trademark and copyright infringement.
6. The infringement appears in Plaintiff's July 17, 2017 letter to the Defendant which appears as Exhibit 3.
7. Defendant respondent to Plaintiff's letter on July 24, 2017 and indicated that there is confusion as they are utilizing the mark in connection with a residential development which differs from Plaintiff's use of the VIA mark in fashion modeling for entertainment services. See Exhibit 4.
8. Defendant's letter is knowingly false. Defendants are using the VIA mark on hats, glasses, t-shirts, wine, cup sleeves, magazine covers, computer sleeves and several other uses. See Exhibit 5.
9. Leary sells t-shirts, socks, cell phone cases, keychains and other items utilizing her mark VIA. They appear on were website at <http://www.viasworld.com/#home.html>.
10. Leary has several videos utilizing the VIA logo on her VIA youtube channel, branding and promoting the fashion and entertainment industry, which include are not limited to the follow videos:

<https://www.youtube.com/watch?v=3BeA74fMo1A>

<https://www.youtube.com/watch?v=dRTzRyU14nQ> (interview with Teddy Bruschi)
<https://www.youtube.com/watch?v=S-9ZZc6tQ8>

<https://www.youtube.com/watch?v=udyCHHBOxiE> (Boston Fashion Awards)

<https://www.youtube.com/watch?v=zgdVBoOR4AA>

<https://www.youtube.com/watch?v=a0kEbFI73-0>

See Exhibit 6

11. Leary's use of her trademark and copyright is superior to Defendant's use.
12. Defendant is unlawfully utilizing Plaintiff's trademark and copyright in furtherance of the promotion and marketing of its real estate development and ancillary products.
13. The Defendant is advertising, manufacturing and distributing multiple products with Plaintiff's trademark without permission.
14. The marks used by the Plaintiff and the Defendant is substantially similar.
15. The Defendant has notice of Plaintiff's mark but willfully continues to infringe on Plaintiff's intellectual property.

**COUNT I- TRADEMARK INFRINGEMENT-
LANHAM TRADEMARK ACT**

16. Plaintiff repeats paragraphs 1-16 above.
17. Defendant's actions are in violation of Lanham Trademark Act, section 1 et seq. 21 (a) 34, 15 U.S.C.A. section 1051-1127.

18. Leary is the legal and equitable order of a mark registered with the USPTO utilizing the word/term VIA.
19. Defendant is utilizing the word VIA in the production, sale, advertising, manufacturing, promotion and distribution of hats, shirts, glasses, wine, computer sleeves and real estate.
20. Defendant is infringing on the mark of VIA and harming Leary in her business.
21. Defendant has caused confusion in the marketplace with its infringing activities and unfair business actions.
22. The Defendant has harmed the Plaintiff in her business.

COUNT II- COPYRIGHT INFRINGEMENT

23. Plaintiff repeats paragraphs 1-22 above.
24. Plaintiff owns a copyright in “VIA”.
25. Defendant is unlawfully utilizing Plaintiff’s copyright for its financial gain.
26. Defendant is using the copyright without Plaintiff’s consent.
27. Defendant is harming Plaintiff in her business.

COUNT III- PERMANENT INJUNCTION

28. Plaintiff repeats paragraphs 1-27 above and 34-48 below.

29. Plaintiff is entitled to an injunction against the Defendant.

30. *Grounds.*

Plaintiff will suffer immediate and irreparable injury, loss, or damage if Defendant's conduct described above is not enjoined for these reasons: (1) the Defendant is infringing on the trademark of VIA (2) the Defendant is causing confusion in the marketplace (3) the Defendant is aware of the VIA trademark yet it continues to utilize the mark in bad faith.

31. Plaintiff does not have an adequate remedy at law because Defendant continues to dilute and use Plaintiff's trademark. Plaintiff has exercised due diligence in prosecuting this claim. The injury to Plaintiff if Defendant continues the conduct described above would outweigh any injury the restraining order and injunction might cause Defendant. An issuance of the restraining order and injunction would not disserve the public interest.

32. Plaintiff has a likelihood of success on the merits.

33. Plaintiff seeks a temporary restraining order restraining Defendant, its officers, agents, servants, and employees from directly or indirectly promoting, advertising, conducting, participating in and receiving or making any payments for any "VIA" product being sold by Defendant.

**COUNT IV-
M.G.L. Ch. 93A VIOLATION**

- 34. Plaintiff repeats paragraphs 1-34 above.
- 35. Defendant's actions occurred substantially and primarily in the Commonwealth of Massachusetts.
- 36. Defendant's actions offends public policy established by law and the concept of fairness.
- 37. Defendant's willful use of Plaintiff's intellectual property is unethical and unscrupulous.
- 38. Defendant's complete disregard for Plaintiff's intellectual property and continues to manufacture and distribute shirts, hats, wine bottles, glasses and other items containing Plaintiff's intellectual property.
- 39. Defendant has complete disregard for the law.
- 40. Defendant's actions violate M.G.L. Ch. 93A.
- 41. Defendant has harmed Plaintiff in her business

**COUNT V- UNFAIR COMPETITION-
LANHAM TRADEMARK ACT**

- 42. Plaintiff repeats paragraphs 1-41 above.
- 43. Defendant's actions are in violation of Lanham Trademark Act.
- 44. Plaintiffs is the legal and equitable order of a mark registered with the USPTO utilizing the word "VIA" and utilizes the mark for unregistered purposes under common law.

45. Defendant is utilizing the word “VIA” in real estate and the distribution of t-shirts, glasses, wine bottles, hats, computer sleeves and other products.
46. Defendant’s action constitution unfair competition to the Plaintiff.
47. Defendant is infringing on the mark of Leary and harming her business.
48. Defendant is engaging in unfair competition by utilizing the mark of the Plaintiff and causing injury to the Plaintiff.

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

The Plaintiff demands,

1. Judgment on all counts;
2. Interest;
3. The sum of Two Million Dollars (\$2,000,000.00);
4. Attorneys Fees;
5. An injunction retraining Defendant from utilizing “VIA” in the sale, promotion, advertising, manufacturing, distribution and marketing; and,
6. Any other relief this Court deems just and equitable.

SILVIA LEARY



Christopher L. Brown
MA Bar No. 642688
Brown & Rosen LLC
Attorneys At Law
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Boston, MA 02109
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617-695-3202 (F)
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September 11, 2017

EXHIBIT 1

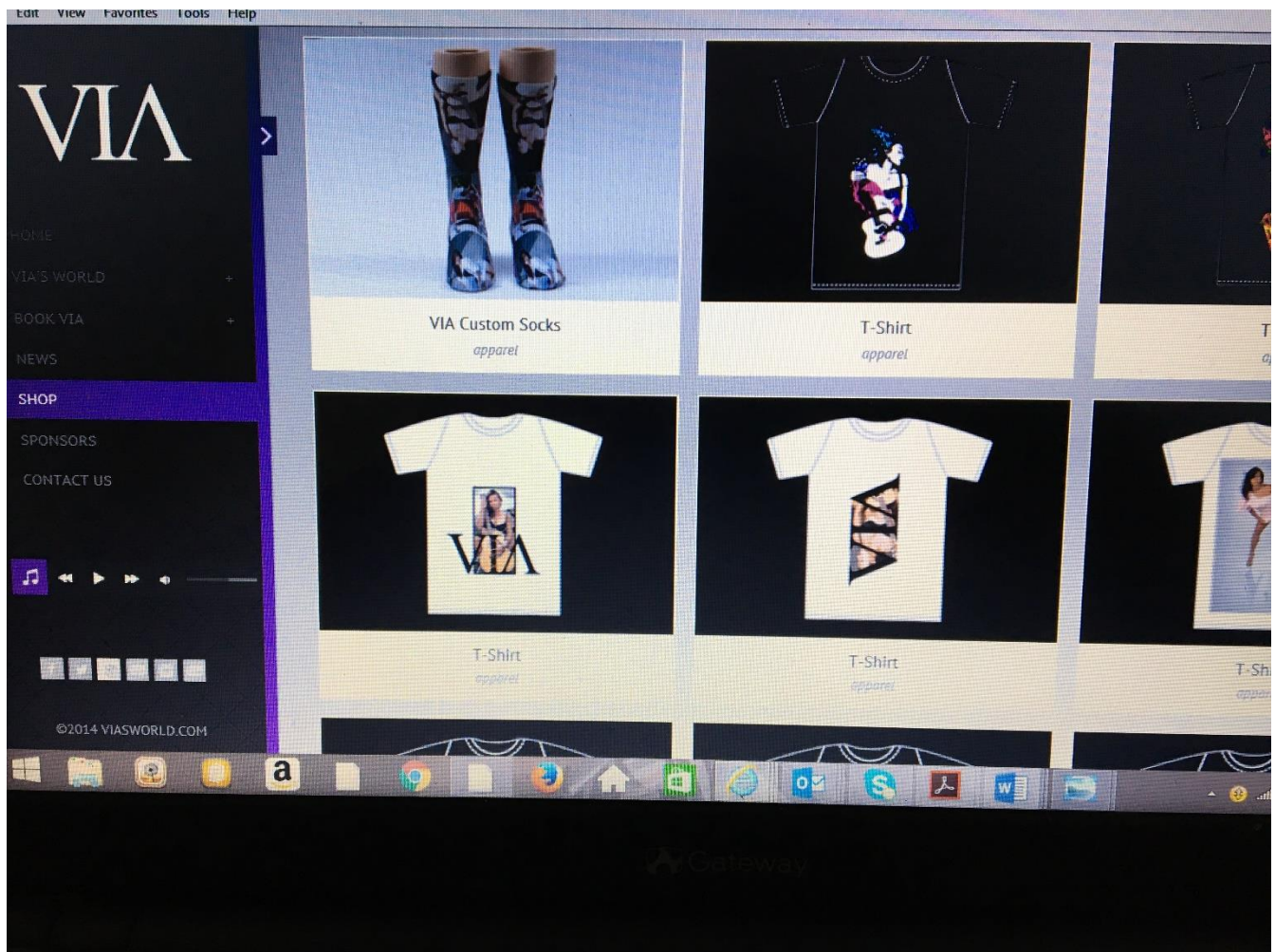
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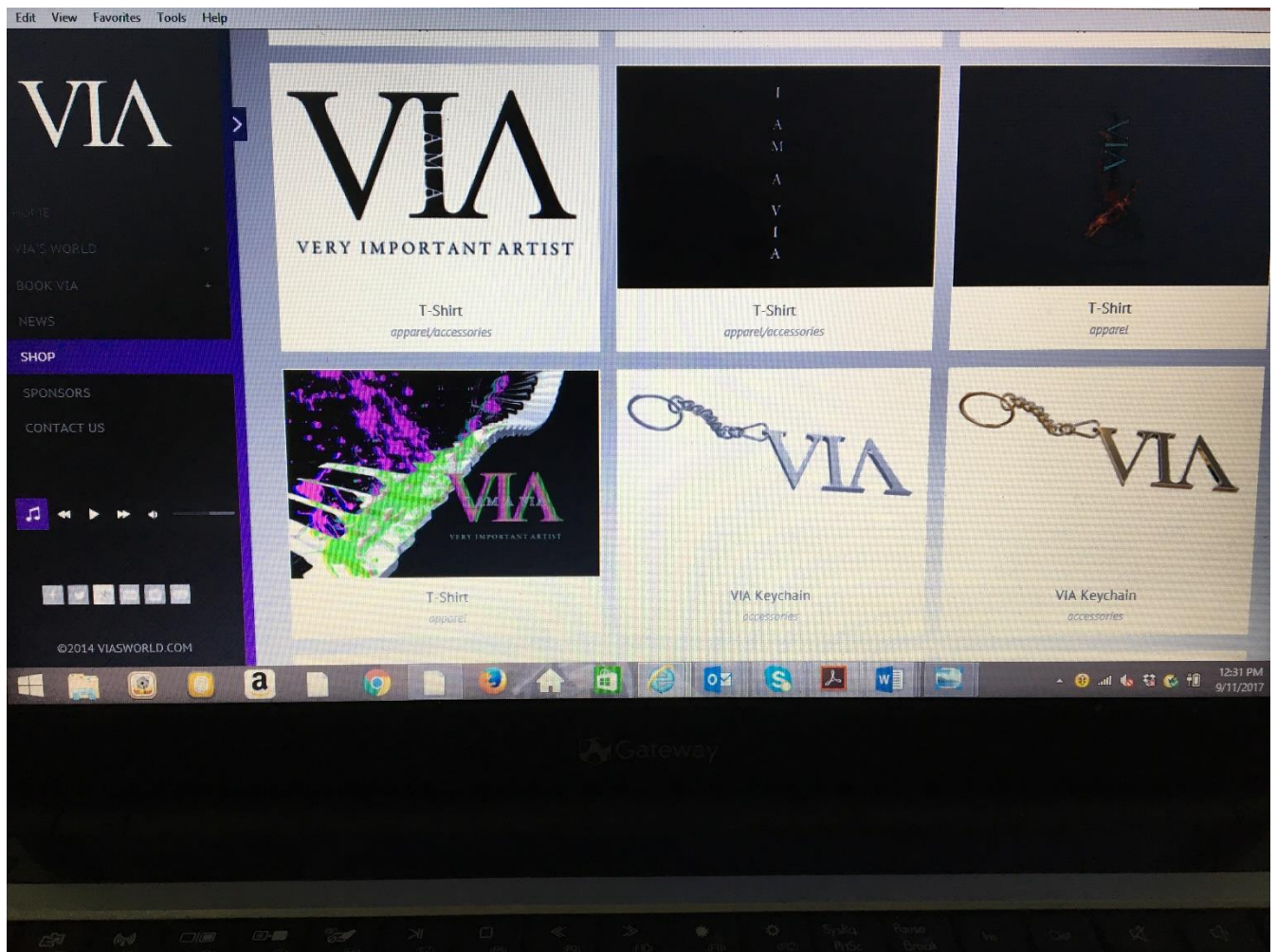
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Word Mark	VIA
Goods and Services	IC 041. US 100 101 107. G & S: Fashion modeling for entertainment purposes. FIRST USE: 20100601. FIRST USE IN COMMERCE: 20160101
Mark Drawing Code	(5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM
Serial Number	86562755
Filing Date	March 12, 2015
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	September 29, 2015
Registration Number	5004316
Registration Date	July 19, 2016
Owner	(REGISTRANT) Leary, Silvia INDIVIDUAL UNITED STATES 35 McGrath HWY Somerville MASSACHUSETTS 02143
Attorney of Record	Brian Price
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of the capital letters "V" "I" "A" where the "A" is without the horizontal bar and thus appears to be an upside down "V". The "V" and "I" are connected at the top of the letters and the "I" is connected to the "A" at the bottom.
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

EXHIBIT 2





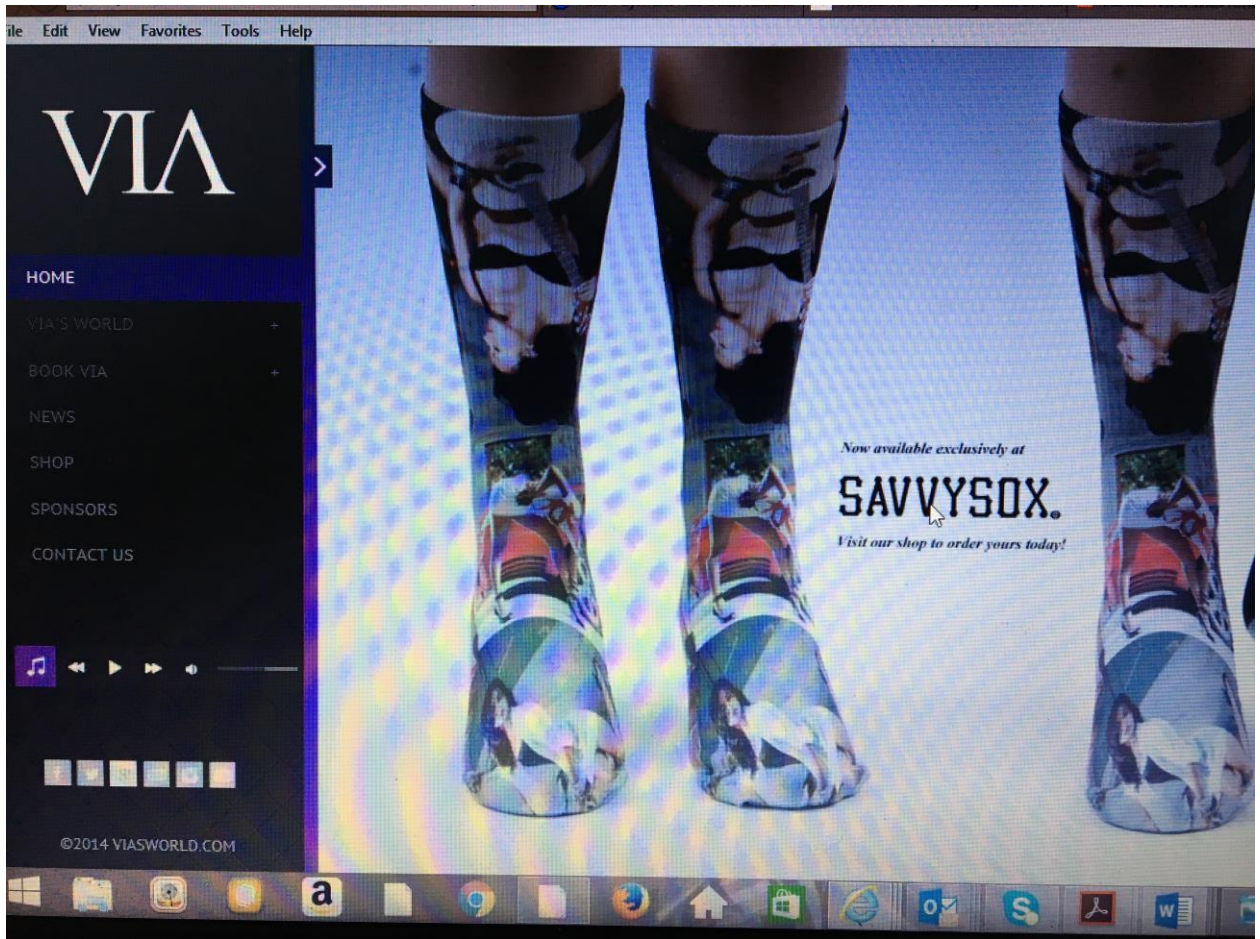


EXHIBIT 3

BROWN & ROSEN LLC

Attorneys At Law
100 State Street, Suite 900 Boston,
MA 02109
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www.brownrosen.com

July 17, 2017

Via Seaport Residences
5 Fan Pier Blvd.
Boston, MA 02210
617 315-4781
617 646-2375 fax

Berkshire Communities LLC
1150 Sanctuary Parkway Suite 150
Alpharetta, GA 30009
770 587-5138 fax

Mary Beth Bloom
Berkshire Communities LLC
1 Beacon Street, Suite 2400
Boston, MA 02109
617 646-2375 fax

RE: VIA Trademark and Copyright

Dear Ms. Bloom:

This office is legal counsel to Silvia Leary ("Leary"). Leary, a Massachusetts resident, is the owner of the VIA trademark. United States Registered Trademark No. 86562755. See Exhibit "A". The mark also appears on her website which was first used in 2014. See <http://www.viasworld.com/#home.html>.

Your website and use of the VIA logo constitutes both trademark and copyright infringement. The infringement appears in your public signage Exhibit "B" and on your website <https://www.berkshirecommunities.com/apartments/ma/boston/via/> Exhibit "C".

Leary is the owner of the trademark and copyright and it is hereby demanded that you cease and desist the usage of her intellectual property immediately. Failure to comply by July 24, 2017 will lead to litigation and a request for an injunction. If you wish to discuss this matter, please contact me.

Sincerely,



Christopher Brown

EXHIBIT A

[TSDR](#)[ASSIGN Status](#)[TTAB Status](#)

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Word Mark VIA

Goods and Services IC 041. US 100 101 107. G & S: Fashion modeling for entertainment purposes. FIRST USE: 20100601. FIRST USE IN COMMERCE: 20160101

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 86562755

Filing Date March 12, 2015

Current Basis 1A

Original Filing Basis 1A

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Owner (REGISTRANT) **Leary, Silvia** INDIVIDUAL UNITED STATES 35 McGrath HWY Somerville MASSACHUSETTS 02143

Attorney of Record Brian Price

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the capital letters "V" "I" "A" where the "A" is without the horizontal bar and thus appears to be an upside down "V". The "V" and "I" are connected at the top of the letters and the "I" is connected to the "A" at the bottom.

Type of Mark SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

EXHIBIT B



EXHIBIT C

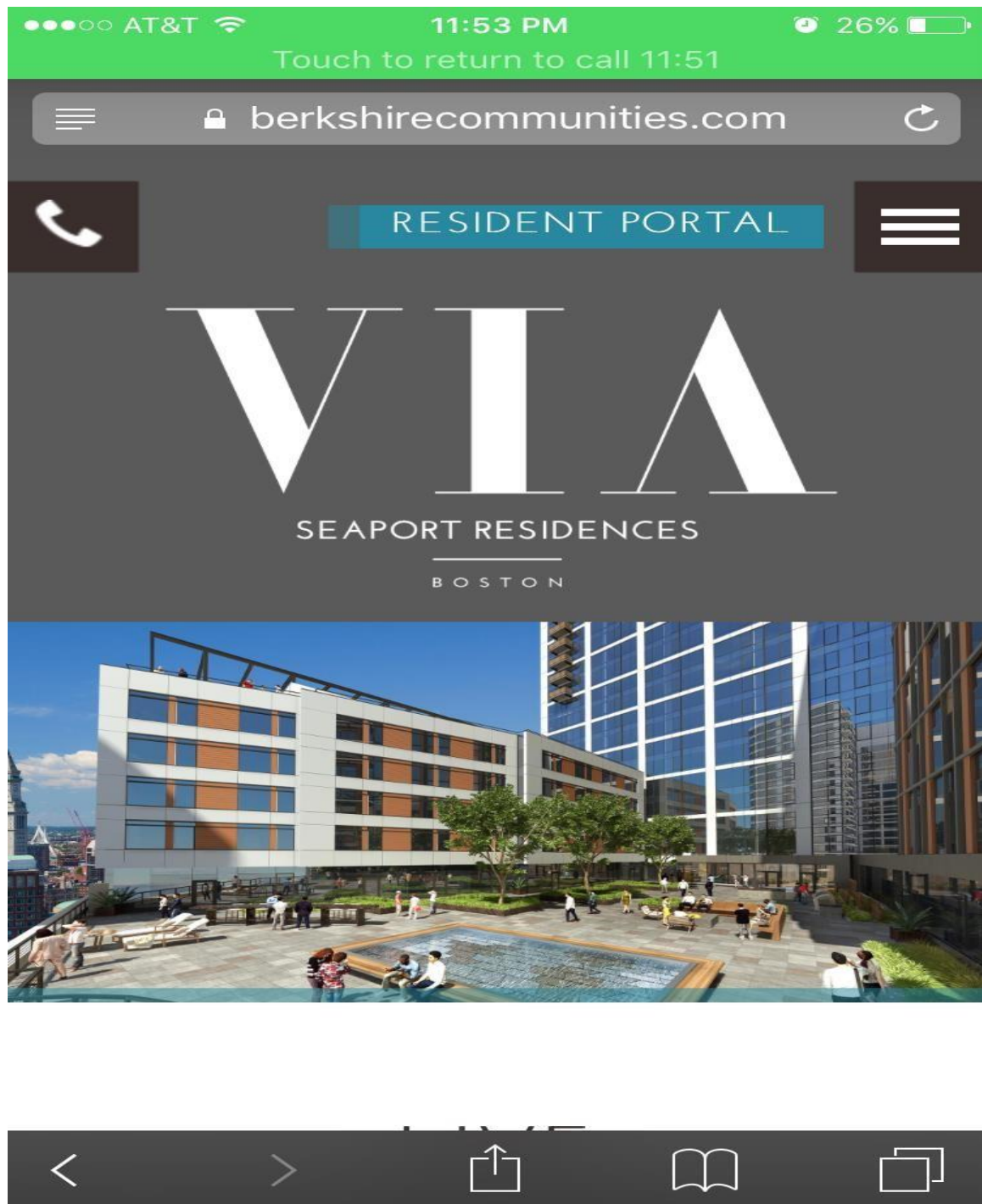


EXHIBIT 4



DLA Piper LLP (US)

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July 24, 2017

VIA ELECTRONIC MAIL

Mr. Christopher Brown
Brown & Rosen LLC
100 State Street, Suite 900
Boston, MA 02109
cbrown@brownrosen.com

Re: VIA Trademark and Copyright

Dear Mr. Brown:

We are writing in response to your letter of July 17, 2017 concerning the above-referenced matter. Our firm is counsel to the Berkshire Group, L.L.C. and related entities, including Berkshire Communities, LLC (collectively, "Berkshire") with respect to its intellectual property matters. As a leading real estate investment and property management company, Berkshire fully understands and respects the importance of intellectual property rights. That said, however, we believe your concern over Berkshire's use of the VIA mark, as described in your letter, is meritless.

As you may know, in determining whether there is a likelihood of confusion between two trademarks, several factors are considered, such as the similarity or dissimilarity of the marks in their entireties; strength of the marks; similarity of the goods/services at issue; channels of trade and relevant consumers; and the extent of potential confusion, among other factors. It is well settled that one of the most important factors is the similarity of the goods/services at issue. Here, while your client, Ms. Leary, purports to own a United States trademark registration for the mark VIA, Ms. Leary's alleged registration covers "fashion modeling for entertainment purposes." An assessment of the foregoing factors inevitably leads to a conclusion that there is no likelihood of confusion between the marks at issue, particularly as the services covered in Ms. Leary's registration and Berkshire's use of the VIA mark in connection with a residential development are wholly distinct.

Similarly, your allegation that Ms. Leary owns a "copyright" in the word VIA (in stylized form) is equally misplaced. First, we found no record of any such copyright registration. More importantly perhaps, it will not be possible for Ms. Leary to obtain a copyright registration for the stylized word VIA, as the following types of works are not subject to copyright: "words and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring." See 37 CFR § 202.1(a).

Therefore, for the reasons noted above and others, we believe that Berkshire has addressed your concerns appropriately and we consider this matter closed. In the event your client elects to continue to pursue this matter, Berkshire reserves the right to take any and all action necessary to defend its rights, including

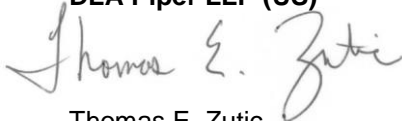
actions that may negatively impact the strength and enforceability of your client's purported VIA trademark registration.



Mr. Christopher Brown
Brown & Rosen LLC
July 24, 2017
Page Two

Finally, please note that this letter is made without prejudice to any other rights or remedies that may be available to Berkshire. Nothing contained herein should be deemed a waiver, admission, or license by Berkshire, and Berkshire expressly reserves the right to assert any other factual or legal positions as additional facts come to light or as the circumstances warrant.

Sincerely,
DLA Piper LLP (US)


Thomas E. Zutic

cc: MaryBeth Bloom, Esq.

EXHIBIT 5

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Liked by **lesfleursandover** and 74 others

viaseaportresidences Please join us this Thursday from 4:00PM-8:00PM at [@wework](#) in Fort Point! You can meet your [#VIASeaportResidences](#) team and [@thebenjaminseaportresidences](#) team as well as take a VIP hard hat tour of [#VIA](#). Drinks will be served courtesy of the wonderful [@craftbeercellar](#). We hope to see you there! 🏙️

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